IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12527, 12561, 12569 & 12571 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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K.G.PATANI - Petitioner(s)

Versus

PATEL CHANDRAKANTBHAI MOTIBHAI & 1 - Respondent(s)

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Appearance :

MR RA MISHRA for Petitioner No(s).: 1.

MR BIPIN I MEHTA for Respondent No(s).: 1.
NOTICE SERVED BY DS for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 09/08/2005

COMMON ORAL JUDGMENT

1. The petitioner in each of the petitions has challenged the order of the Labour Court, Anand.

2. Mr.Hathi for the respondent has raised a preliminary objection that the Administrator cannot challenge the

order of the Labour Court since the General Body has accepted the consent terms between the parties.

3. The Administrator being a Taluka Development Officer who, at the relevant time, was incharge of the Panchayat and has taken over charge of the Panchayat, the preliminary objection is not accepted and the matter is taken up for hearing.

4. The Labour Court has accepted the compromise terms and in spite of that fact, the recruitment was made contrary to the sanctioned post. In the decision of this Court in the case of Amreli Municipality vs. Gujarat Pradesh Municipal Employees Union, reported in 2004 (2) GLH 692, it is held that the Labour Court/Industrial Courts cannot issue directions conferring benefits of permanency or regularisation when recruitment in the local body has been made dehors the recruitment rules. In view of the ratio laid down by this Court in the above decision, the Labour Court is required to consider all factors before granting permanency or any benefits available to the workman.

5. In view the fact that the award is passed with

consent and as the Panchayat has challenged it, it is not desirable to observe anything on merits. In that view of the matter, these petitions are required to be allowed and the matters are required to be remanded to the Labour Court. The petitions are, therefore, allowed and the order of the Labour Court in each of the petition is quashed and set aside. The matters are remanded to the Labour Court, Anand. The Labour Court, Anand will consider all the issues including the backwages while deciding the matter on merits and shall decide the same within one year without being influenced by the fact that this Court has remanded these matters.

6. At this stage, Mr.Hathi, learned Counsel states that the workmen have been taken back in service. If that be so, they will not be disturbed. It is made clear that the respondents will not seek any adjournment and if they seek any adjournment, the protection granted by this Court will not continue after 31st August 2006. Rule is made absolute. No order as to costs.

(K.S. Jhaveri, J.)

Sreeram.